

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Dellutri Pernal Simpson,)	Case No. 6:24-cv-04502-DCC
)	
Plaintiff,)	
)	
v.)	ORDER
)	
Joshua R. Pierce,)	
)	
Defendant.)	
_____)	

This matter is before the Court on Plaintiff's complaint alleging violations of his civil rights. ECF No. 1. In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) (D.S.C.), this matter was referred to United States Magistrate Judge Bristow Marchant for pre-trial proceedings and a Report and Recommendation ("Report"). On September 16, 2024, the Magistrate Judge issued a Report recommending that this action be dismissed pursuant to Federal Rule of Civil Procedure 41(b) for failure to prosecute or, alternatively, for failure to state a plausible claim. ECF No. 13. The Magistrate Judge advised Plaintiff of the procedures and requirements for filing objections to the Report and the serious consequences for failing to do so. Plaintiff has not filed objections to the Report and the time to do so has lapsed.

APPLICABLE LAW AND ANALYSIS

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. See *Mathews v. Weber*, 423 U.S. 261 (1976). The

Court is charged with making a de novo determination of any portion of the Report of the Magistrate Judge to which a specific objection is made. The Court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. See 28 U.S.C. § 636(b). The Court will review the Report only for clear error in the absence of an objection. See *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that “in the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” (citation omitted)).

While Plaintiff has filed no objections, the Court believes it is appropriate to briefly discuss the procedural history of this action. Plaintiff’s complaint was received on August 16, 2024. ECF No. 1. Thereafter, the Magistrate Judge issued a proper form order and an amendment order. ECF Nos. 7, 9. These documents were mailed to Plaintiff on August 22, 2024. On September 12, 2024, the mail was returned and “please remove staples inside” was handwritten on the envelope. ECF No. 11. The envelope was also stamped “return to sender not deliverable as addressed.” *Id.* The docket notes indicate that the Clerk’s Office intended to re-mail the orders without staples but there is no further indication that the orders were re-mailed. Four days later, the Magistrate Judge issued the Report recommending dismissal. The Report was mailed to the same address without staples and has not been returned. See ECF Nos. 13, 14.

The Court is concerned that Plaintiff never received the initial orders directing him to bring this case into proper form and to file an amended complaint; accordingly, the

Court declines to adopt the portion of the Report recommending dismissal pursuant to Rule 41(b). Nevertheless, this case remains subject to dismissal based upon the Magistrate Judge's review of the merits of this action. As noted above, Plaintiff did not file objections. Therefore, the Court's review has been for clear error. Upon such review, the Court agrees with the recommendation of the Magistrate Judge.

After considering the record in this case, the applicable law, and the Report of the Magistrate Judge, the Court adopts in part and declines to adopt in part the recommendation of the Magistrate Judge as set out above. Accordingly, this action is **DISMISSED** without prejudice.¹

IT IS SO ORDERED.

s/ Donald C. Coggins, Jr.
United States District Judge

October 29, 2024
Spartanburg, South Carolina

¹ The Clerk of Court is directed to mail this document without staples.